

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
CONSUMERS ENERGY COMPANY)	
for approval of Amendment 2 of the power purchase)	Case No. U-18392
agreement with T.E.S. Filer City Station Limited)	
Partnership.)	
_____)	

At the February 5, 2018 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER APPROVING SETTLEMENT AGREEMENT

On May 8, 2017, Consumers Energy Company (Consumers) filed an application, with supporting testimony and exhibits, requesting *ex parte* approval of Amendment No. 2 to its power purchase agreement with T.E.S. Filer City Station Limited Partnership pursuant to MCL 460.6j(13) and all other applicable law.

A prehearing conference was held on June 27, 2017, before Administrative Law Judge Martin D. Snider (ALJ). At the prehearing conference, the ALJ granted a petition to intervene filed by Independent Power Producers Coalition of Michigan (IPPC), over Consumers' objection, finding that IPPC met the requirement for permissive intervention. 1 Tr 17. Intervention was also granted to the Michigan Department of the Attorney General (Attorney General) and the Residential Customer Group (RCG). The Commission Staff (Staff) also participated. Subsequently,

Consumers and the Staff filed a settlement agreement resolving all issues in the case. The Attorney General, IPPC, and RCG filed statements of non-objection to the settlement agreement.

The Commission has reviewed the settlement agreement and finds that the public interest is adequately represented by the parties who entered into the settlement agreement. The Commission further finds that the settlement agreement is in the public interest, represents a fair and reasonable resolution of the proceeding, and should be approved.

THEREFORE, IT IS ORDERED that the settlement agreement, attached as Exhibit A, is approved.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of February 5, 2018.

Kavita Kale, Executive Secretary

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BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
CONSUMERS ENERGY COMPANY)	
for Approval of Amendment 2 of the Power)	Case No. U-18392
Purchase Agreement with T.E.S. Filer City)	
Station Limited Partnership)	
_____)	

SETTLEMENT AGREEMENT

Pursuant to MCL 24.278 and Rule 431 of the Michigan Administrative Hearing System’s Rules of Practice and Procedure before the Michigan Public Service Commission (“MPSC” or the “Commission”), Mich Admin Code, R 792.10431, the undersigned parties agree as follows:

WHEREAS, on May 8, 2017, Consumers Energy Company (“Consumers Energy” or the “Company”) filed an Application which requested the Commission to approve an amendment to the Company’s Power Purchase Agreement (“PPA”) with T.E.S. Filer City Station Limited Partnership (the “Partnership”) pursuant to MCL 460.6(j)(13) and all other applicable law.

WHEREAS, the initial prehearing conference in this proceeding was held on June 27, 2017 before Administrative Law Judge Martin D. Snider. The parties to the case are Consumers Energy, the Commission Staff (“Staff”), the Attorney General, the Residential Customer Group, and the Independent Power Producers Coalition of Michigan.

WHEREAS, the PPA between Consumers Energy and the Partnership was originally entered into on July 31, 1986 and included the purchase of all electric capacity and energy output from a cogeneration plant to be located in or near Filer City, Michigan (“Filer City Plant”). Pursuant to the terms of the PPA, the Filer City Plant was: (i) expected to be fueled with coal, waste wood, and paper sludge; (ii) expected to be equipped with a generator with a nameplate rating not to exceed 60,000 kilowatts; and (iii) expected to be capable of extracting up to

280,000 lbs per hour of 600 psi process steam. The PPA was approved by the Commission in its February 19, 1987 Order in MPSC Case No. U-8562. Subsequent to the Commission's approval, the PPA was amended on April 30, 1987 ("Amendment No. 1") to adopt capacity payment rates which conformed to limitations established by the Commission in its February 19, 1987 Order. The PPA, as amended by Amendment No. 1, has an initial term that will conclude on June 16, 2025 and allows for subsequent one-year terms thereafter unless either the Company or the Partnership issues a notice of its election to terminate the agreement.

On May 4, 2017, Consumers Energy and the Partnership executed a second amendment to the PPA ("Amendment No. 2"), which is shown on Exhibit A-2 (DFR-2). Amendment No. 2 provides for the Filer City Plant to be converted to use natural gas as its primary fuel, instead of coal, which will economically necessitate the installation of highly efficient combustion turbine technology. The more efficient process of converting heat to electricity will produce less waste heat per watt-hour of electricity generated; however, with this cogeneration plant, the steam host still requires delivery of 50,000 lbs per hour of 600 psi process steam. To address this issue, the converted Filer City Plant will increase the amount of electric capacity and energy produced. Under Amendment No. 2, the Filer City Plant will sell its electric capacity and energy to the Company at a lower rate than the rate specified under the existing terms of the PPA. Amendment No. 2 also extends the initial term of the PPA to 15 years after the completed conversion of the Filer City Plant. When converted, the Filer City Plant is expected to have a net output of approximately 225 MW and 50,000 lbs per hour of 600 psi process steam.

In this proceeding, Consumers Energy seeks approval of Amendment No. 2 of Consumers Energy's PPA with the Partnership, and specifically requests that the Commission approve recovery by Consumers Energy of the payments under the amended PPA, as amended

by Amendment No. 2, for the kilowatt hours delivered by the Partnership to Consumers Energy after the Converted Plant Initial Delivery Date for the purposes of Section 6j(13)(b) of 1982 Public Act 304 (“PA 304”), 1987 Public Act 81 (“PA 81”), and all other applicable law. In support of that request, Consumers Energy has presented testimony and exhibits which support the substantial benefits that Amendment No. 2 provides to the Company’s customers. Under the terms of the amendment, the cost to customers is expected to be reduced over the 15-year term by approximately \$45 million on a net present value basis. The customer benefits of Amendment No. 2 were further explained in the testimony of Company witness David F. Ronk, Jr. and illustrated in Exhibits A-3 (DFR-3) and A-4 (DFR-4).

Because Amendment No. 2 represents an amendment to an agreement between the Company and an affiliate, the Commission’s Code of Conduct is applicable. Amendment No. 2 complies with the Code of Conduct. Exhibit A-5 (DFR-5) provides a detailed calculation of the Company’s fully allocated embedded cost of capacity plus 10% of the Company’s fully allocated embedded cost of capacity, and compares that amount to be charged by Filer City under Amendment No. 2. As shown in the exhibit, the highest amount to be charged for capacity under Amendment No. 2 is lower than the Company’s fully allocated embedded cost of capacity plus 10%, and is lower than the market price for capacity to which the Company is otherwise exposed. With respect to the energy price to be paid, the Company will make an energy payment based on the market price and will only purchase energy if the cost of production over the Company’s proposed Scheduled Delivery Period is less than the Day-Ahead LMP over the same period, thus creating positive net energy value for customers.

NOW THEREFORE, for purposes of settlement of Case No. U-18392, the undersigned parties agree as follows:

1. The parties agree that Consumers Energy shall be granted approval of Amendment No. 2 of Consumers Energy's PPA with the Partnership and shall be permitted recovery of the payments under the amended PPA, as amended by Amendment No. 2, for the kilowatt hours delivered by the Partnership to Consumers Energy after the Converted Plant Initial Delivery Date for the purposes of Section 6j(13)(b) of PA 304, PA 81, and all other applicable law;

2. The parties further agree that Amendment No. 2 complies with the Commission's Code of Conduct.

3. The parties agree that once the necessary approvals of Amendment No. 2 are granted or denied by the Federal Energy Regulatory Commission, Consumers Energy shall file a letter in the MPSC Case No. U-18392 e-docket indicating that such approvals were granted or denied.

4. This settlement is entered into for the sole and express purpose of reaching a compromise among the parties. All offers of settlement and discussions relating to this settlement are, and shall be considered, privileged under Michigan Rule of Evidence 408. If the Commission approves this Settlement Agreement without modification, neither the parties to this Settlement Agreement nor the Commission shall make any reference to, or use, this Settlement Agreement or the order approving it, as a reason, authority, rationale, or example for taking any action or position or making any subsequent decision in any other case or proceeding; provided, however, such references may be made to enforce or implement the provisions of this Settlement Agreement and the order approving it.

5. This Settlement Agreement is based on the facts and circumstances of this case and is intended for the final disposition of Case No. U-18392. So long as the Commission approves this Settlement Agreement without any modification, the parties agree not to appeal, challenge, or otherwise contest the Commission order approving this Settlement Agreement. Except as otherwise set forth herein, the parties agree and understand that this Settlement Agreement does not limit any party's right to take new and/or different positions on similar issues in other administrative proceedings, or appeals related thereto.

6. This Settlement Agreement constitutes the entire agreement of the parties and is not severable. Each provision of the Settlement Agreement is dependent upon all other provisions of this Settlement Agreement. Failure to comply with any provision of this Settlement Agreement constitutes failure to comply with the entire Settlement Agreement. If the Commission rejects or modifies this Settlement Agreement or any provision of the Settlement Agreement, this Settlement Agreement shall be deemed to be withdrawn, shall not constitute any part of the record in this proceeding or be used for any other purpose, and shall be without prejudice to the pre-negotiation positions of the parties.

7. The parties agree that approval of this Settlement Agreement by the Commission would be reasonable and in the public interest.

8. The parties agree to waive Section 81 of the Administrative Procedures Act of 1969 (MCL 24.281), as it applies to the issues resolved in this Settlement Agreement, if the Commission approves this Settlement Agreement without modification.

9. This Settlement Agreement may be executed in multiple counterparts.

WHEREFORE, the undersigned parties respectfully request the Michigan Public Service Commission to approve this Settlement Agreement on an expeditious basis and to make it effective in accordance with its terms by final order.

MICHIGAN PUBLIC SERVICE COMMISSION STAFF

By: **Meredith R. Beidler**
Meredith R. Beidler (P78256)
Monica M. Stephens (P73782)
7109 W. Saginaw Hwy., 3rd Floor
Lansing, MI 48917

Digitally signed by Meredith R. Beidler
DN: cn=Meredith R. Beidler, o=Public
Service Division, ou=Attorney General
Dept., email=beidlerm@michigan.gov,
c=US
Date: 2018.01.18 14:06:04 -05'00'

Dated: January 18, 2018

CONSUMERS ENERGY COMPANY

By: 
Anne M. Uitvlugt (P71641)
Robert W. Beach (P73112)
Attorney for Consumers Energy Company
One Energy Plaza
Jackson, MI 49201

Digitally signed by
Robert W. Beach
Date: 2018.01.19
10:04:55 -05'00'

Dated: January 19, 2018

STATEMENT OF NON-OBJECTION

The following parties to Case No. U-18392 have agreed not to object to the Commission's approval of the Settlement Agreement.

RESIDENTIAL CUSTOMER GROUP

By: Don L. Keskey Date: January 15, 2018
Don L. Keskey (P23003)
Brian W. Coyer (P40809)
Public Law Resource Center PLLC
333 Albert Avenue, Suite 425
East Lansing, MI 48823

ATTORNEY GENERAL, BILL SCHUETTE

By: _____ Date: _____
Michael E. Moody, Esq. (P51985)
Joel King, Esq. (P81270)
Assistant Attorney General
Michigan Dept. of Attorney General,
Special Litigation Unit
6th Floor Williams Building
Post Office Box 30755
Lansing, MI 48909

INDEPENDENT POWER PRODUCERS COALITION OF MICHIGAN

By: _____ Date: _____
Timothy J. Lundgren, Esq. (P62807)
Laura A. Chappelle, Esq. (P42052)
Toni L. Newell, Esq. (P69096)
Varnum LLP
201 North Washington Square, Suite 910
Lansing, MI 48933

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Brian W. Coyer (P40809)
Public Law Resource Center PLLC
333 Albert Avenue, Suite 425
East Lansing, MI 48823

ATTORNEY GENERAL, BILL SCHUETTE

 Michael Moody
2018.01.18
16:54:33 -05'00'
By: _____ Date: January 18, 2018
Michael E. Moody, Esq. (P51985)
Joel King, Esq. (P81270)
Assistant Attorney General
Michigan Dept. of Attorney General,
Special Litigation Unit
6th Floor Williams Building
Post Office Box 30755
Lansing, MI 48909

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By: _____ Date: _____
Timothy J. Lundgren, Esq. (P62807)
Laura A. Chappelle, Esq. (P42052)
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_____)	

**STATEMENT OF NON-OBJECTION BY THE INDEPENDENT POWER PRODUCERS
COALITION OF MICHIGAN**

Pursuant to Rule 431 of the Commission’s Rules of Practice and Procedure, Mich Admin Code 792.10431, the Independent Power Producers Coalition of Michigan (“IPPC”), by its attorneys, Varnum LLP, hereby files its statement of non-objection to the Settlement Agreement between Consumers Energy Company and the Michigan Public Service Commission Staff filed in this proceeding.

IPPC maintains the positions taken in all of its pleading in this case, including its filed Exceptions to the Proposal for Decision (“PFD”), but otherwise waives further rights in this matter under Section 81 of the Administrative Procedures Act of 1969, as amended, 1969 PA 306, § 81, MCL 24.281, and further waives its right to present evidence or arguments in opposition to the amended Settlement Agreement pursuant to Rule 531(5)(a).

IPPC's Statement of Non-Objection does not make IPPC subject to the Settlement Agreement for any purpose, including the application of any of the provisions contained therein.

Respectfully submitted,

Varnum, LLP
Attorneys for the Independent Power Producers
Coalition of Michigan

**Timothy
Lundgren**

Digitally signed by Timothy Lundgren
DN: cn=Timothy Lundgren,
o=Varnum, ou,
email=tjlundgren@varnumlaw.com,
c=US
Date: 2018.01.16 13:11:34 -05'00'

January 16, 2018

Tim Lundgren (P62807)
Laura Chappelle (P42052)
The Victor Center, Suite 910
201 N. Washington Square
Lansing, Michigan 48933
517/482-6237